

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LEROY CARVER,

Plaintiff,

Hon. Hugh B. Scott

11CV32S

v.

Order

J. PATTERSON, et al.,

Defendants.

Before the Court is plaintiff's motion to identify remaining John and Jane Doe defendants (Docket No. 7). Plaintiff, proceeding pro se, made a similar motion (Docket No. 5) which was granted in part in the Order granting plaintiff leave to proceed in forma pauperis under his Amended Complaint (Docket No. 6, Order of Jan. 15, 2014, at 28-29, 30). This case was referred to the undersigned on March 10, 2014 (Docket No. 8).

BACKGROUND

On January 11, 2011, plaintiff filed a Complaint against Corrections Officers Patterson, Barrett, Farrell, Watson, and a Corrections Officer identified only as "C.P." (Docket No. 1). Plaintiff also moved for leave to proceed in forma pauperis (Docket No. 2), which was granted (Docket No. 3). That Order also required the New York State Attorney General's office to identify C.P., pursuant to Valentin v. Dinkins, 121 F.3d 72 (2d Cir. 1997) (per curiam) (Docket No. 3, Order at 2-3). While service of the original Complaint was pending, on April 22, 2011, plaintiff filed an Amended Complaint (Docket No. 4) adding 24 new defendants and claims.

These new defendants include John and Jane Doe New York State Department of Corrections and Community Supervision (or hereinafter “DOCCS”) employees and officials, such as the nurses and nurse administrator, audiologist, ADA coordinator, health services director, facility doctors, grievance supervisor and director, corrections counselor, corrections officers, sergeants, and lieutenants (id.). Plaintiff later moved to have these John and Jane Does identified (Docket No. 5).

On January 15, 2014, this Court screened the amended pleading, dismissed some claims and defendants (including John Doe Corrections Officer C.P., Docket No. 6, Order at 26 n.11, 13-14, 29¹), and granted in part plaintiff’s motion to identify the John and Jane Does, with the Attorney General’s office ordered only to identify the John and Jane Doe nurse and physician who allegedly failed to treat plaintiff following the September 28, 2010, assault and those who treated plaintiff on September 28, 2010, and the physicians who examined plaintiff on October 19 and 27, 2010 (Docket No. 6, Order, at 25-26, 27-29, 18-21). The other John and Jane Does were dismissed and plaintiff’s motion to identify them was denied as moot (id. at 28). The Attorney General was to ascertain the identities of these John and Jane Doe defendants by February 10, 2014 (id. at 26, 28-29, 18). The Attorney General did not file anything regarding these identifications.

Meanwhile, on March 5, 2014, plaintiff filed the present motion to identify John and Jane Does (Docket No. 7). Plaintiff wants this resolved to avoid any prejudice in timely serving these defendants (id. at 1). Plaintiff attaches a copy of what appears to be a denial of a Freedom of

¹ The Order dismisses claims against C.P. but also directed plaintiff to identify that corrections officer through discovery with leave to reapply to amend the caption to name the identified officer, Docket No. 6, Order at 26 n.11.

Information Law request he submitted (*id.* at 3). Plaintiff's motion makes no reference to this Court's Order of January 15, 2014.

DISCUSSION

While plaintiff cites to the original Complaint and the timing for service, he later amended that pleading. This Court, on January 15, 2014, reviewed the Amended Complaint and ordered its service by the United States Marshal (Docket No. 6, Order at 30-31), with a courtesy copy of the pleading being sent to the regional office of the New York State Attorney General (*id.* at 31). Therefore, the portion of plaintiff's motion seeking an Order for service of the Amended Complaint is **deemed moot**.

As for identification of the remaining John and Jane Does, that Order also required the Attorney General's office to identify certain John and Jane Does, but no response was filed by that office. Therefore, plaintiff's renewed motion is **granted in part**, with the regional office of the Attorney General to report on the identification of the John and Jane Does previously listed to be identified by **April 22, 2014**. As previously ordered, the identification of the remaining John and Jane Does named in the Amended Complaint is **denied as moot**.

CONCLUSION

For the reasons stated above, plaintiff's motion (Docket No. 7) to identify the John and Jane Doe defendants and to compel service of the Amended Complaint is **granted in part**, **denied in part**. The regional office of the New York State Attorney General is to attempt to ascertain the identity of those John and Jane Doe defendants previously discussed (Docket No. 6, Order of Jan. 15, 2014, at 25-26, 27-29, 18-21) and provided said information to the Court by **April 22, 2014**. A copy of this Order will be submitted to the Assistant Attorney General in

Charge, Buffalo Regional Office. Plaintiff's motion for service of the Amended Complaint is **deemed moot** since that service has already been ordered (Docket No. 6, Order, at 30-31).

So Ordered.

Hugh B. Scott
Hon. Hugh B. Scott
United States Magistrate Judge

Dated: Buffalo, New York
March 24, 2014